The University of Chicago

LABOR LEGISLATION IN KANSAS

A PART OF THE DISSERTATION SUBMITTED TO THE GRADUATE FACULTY IN CANDIDACY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF ECONOMICS

By
DOMENICO GAGLIARDO

Private Edition, Distributed by
THE UNIVERSITY OF CHICAGO LIBRARIES
CHICAGO, ILLINOIS

Reprinted from
KANSAS STUDIES IN BUSINESS
No. 14, May, 1931

The University of Chicago

LABOR LEGISLATION IN KANSAS

A PART OF THE DISSERTATION SUBMITTED TO THE GRADUATE FACULTY IN CANDIDACY FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF ECONOMICS

By
DOMENICO GAGLIARDO

Private Edition, Distributed by
THE UNIVERSITY OF CHICAGO LIBRARIES
CHICAGO, ILLINOIS

Reprinted from
KANSAS STUDIES IN BUSINESS
No. 14, May, 1931

R. UNIV.
BIBLIOTHEEK
LEIDEN

CONTENTS

Introduction 7

I. The Development of Basic Labor Legislation 12
- A. Mining Legislation 12
- B. Child Labor Legislation 14
- C. Regulation of Hours of Labor 19
- D. Wage Legislation 21

II. The Industrial Court 29
- A. The Operation of the Industrial Court 31
- B. The Relation of the Industrial Court to Labor Disputes 33

III. Employers' Liability and Workmen's Compensation Legislation 41
- A. Employers' Liability Provisions 41
- B. Workmen's Compensation Provisions 44

IV. Provisions Governing Labor Organizations and Employment Bureaus 53
- A. Labor Organizations 53
- B. Employment Bureaus 55

V. Administration of Kansas Labor Legislation 57
- Early Administration 57
- The Industrial Welfare Commission 59
- The Industrial Court 60
- Recent Developments in Administration 60

AUTHOR'S PREFACE

Kansas was born of the struggle to abolish slavery, and the crusading spirit which guided her people in that great struggle has continued to be one of her chief characteristics. At times her civic conscience has been aroused to such a high pitch that its expression has startled the nation. One need but recall in this connection prohibition, Populism, woman suffrage, and the industrial court. But even when she was not plunged into the thick of one of her "moral crusades," in the humdrum routine of her daily life, a strong sense of individual worth has been the characteristic leaven of her people. It goes without saying that this spirit has left its impress upon the state's labor legislation. The writer has elsewhere traced in detail the history of Kansas labor legislation, and offers here a summary statement of that history.

Domenico Gagliardo.

May 20, 1931.

Digitized by the Internet Archive
in 2026

https://archive.org/details/IA41546811_0038

INTRODUCTION

The principal conditioning factor in the evolution of Kansas labor legislation has been the economic development of the state. From 1860 to 1890 a steady stream of immigrants came to settle upon the prairies of Kansas, first in covered wagons and later by rail. They made of Kansas what she has remained to this day, an agricultural state engaged principally in the growing of corn and wheat and the raising of livestock. By 1890 the population of the state had reached 1,428,108, and in 1930 it had increased to 1,880,999.

During this period of expansion a sprinkling of handicraft industries called forth apprenticeship, mechanics' lien, and wage preference laws. School attendance for exceedingly brief periods was required, and there were laws designed to safeguard the morals of children by prohibiting their employment as acrobats, circus riders, and the like.

The great growth of the railroad industry between 1864 and 1890 made possible a rapid development in agriculture and population. In 1864 there were only forty miles of railroad in Kansas, but the mileage soon grew, reaching 2,150 miles in 1875 and 8,892 miles in 1890. This development brought into the state a new class of workers, having special needs for protective legislation. Railway labor legislation

was enacted, which consisted for the most part of employers' liability laws. The need for safety regulations has been met largely by national legislation, for most Kansas railway mileage belongs to railroads engaged in interstate commerce. However, a law regulating the hours of trainmen was enacted by the Kansas Legislature early in the present century.

The mining of coal began with the establishment of military posts, but did not assume importance until late in the seventies. By 1900 over ten thousand wage earners were employed in this industry, and they mined over four million tons of coal. The number employed reached its peak in 1913 with 12,506, and the production of coal increased steadily until 1917 when 7,250,000 tons were mined. In the more recent years the industry has gradually declined; the number employed in 1929 was only 5,577, while the amount of coal mined was 3,500,000 tons.

The growth of the coal mining industry had a marked effect upon the development of labor legislation. Coal mining labor laws constitute the largest single element in the code and prescribe in great detail conditions of employment in this industry. Since 1909 the petroleum and the metal mining industries have become important, more than offsetting the decline of coal mining. However, almost no labor legislation specially applicable to these newer industries has been enacted, and, until recently, no great need for legislation has been felt.

Manufacturing in Kansas was stimulated by the

expansion in agriculture, transportation, and mining. The most important manufactures are primarily concerned, either directly or indirectly, with the processing of agricultural products. Examples of this are the milling and the meat packing industries. But Kansas has never been pre-eminently a manufacturing state. The largest number of wage earners in manufacturing ever reported was in 1919, when the figure was 61,049. The amount of value added by manufacture increased from $33,271,000 in 1899 to $163,429,000 in 1927, but much of this increase was due to the general rise in prices after 1914.

Except for the general store and the small shop, which are characteristic of rural communities, trade and commerce developed late. In 1920 only 67,354 persons were reported as being gainfully occupied in trade. Much trade is still conducted on a small scale, with the result that the number of entrepreneurs is relatively large as compared with most industries.

Political movements have played a relatively insignificant role in the history of Kansas labor legislation for two reasons. In the first place one of the major parties has been so powerful that there have been few occasions on which a second or a third party has been able to capture the governmental machinery. In the second place, the fact that wage earners have constituted a relatively small part of the voting population has made it unnecessary for any party to seek labor votes through labor legisla-

tion. Furthermore, the political weakness of labor has been accentuated by the absence of a well-developed trade union movement.

The rising tide of Populism reached its high mark in the period 1896-1898, during which both branches of the legislature and the governorship went to the Populists. The Populist legislative sessions of 1897 and 1898 did add appreciably to the labor code, although most of this legislation has since been repealed or declared unconstitutional. In 1897 it was made unlawful to compel workers, as a condition of securing or continuing in employment, to agree to give up union membership, employers were forbidden to blacklist any employee; persons charged with indirect contempt of court were allowed a jury trial; and all officers appointed to protect life and property were required to be citizens of Kansas. During the special session of 1898 two laws were enacted which placed the selection of state labor officials in the hands of the trade unionists.

In Kansas the Progressive movement of 1908-1914 was somewhat in the nature of a return of Populism. It never became strong enough to govern, but by splitting the ranks of the major parties, it did make possible the election of a Democratic government in 1912. The Democratic legislature of 1913 enacted a few important labor laws, but it cannot be said that this legislation was the direct fruit of the Democratic successes in the election of 1912, or even of the Progressive movement. The Socialist movement, which

centered in the coal mining regions of southeastern Kansas, and which was led by the Socialist newspaper, the *Appeal to Reason,* never became an important factor in Kansas politics, nor did it leave any clearly discernible traces upon the history of Kansas labor legislation.

I. THE DEVELOPMENT OF BASIC LABOR LEGISLATION

A. Mining Legislation

Coal Mining. Great mine disasters are constant reminders that the mining of coal is an inherently dangerous occupation. However, the heaviest toll in terms of lives and suffering is not taken by these spectacular occurrences. The greatest havoc is wrought in the daily routine of underground work by falling rock and coal, by motive power, machinery, moving cars and engines, by explosives, and by inadequate ventilation. And largely because of the manner in which the industry is conducted, the miner may be subjected to special types of exploitation. His coal may be weighed inaccurately, his wages paid in "scrip," and he may be compelled to trade at the "company" store.[1]

To guard against these evils, Kansas was quick to enact protective legislation.[2] A mining code was adopted in 1883.[3] That code called for a map of every

1. The need for mining legislation is very well summarized by Earl R. Beckner in his *History of Illinois Labor Legislation*, pp. 284-290.

2. The historical development of Kansas coal mining legislation may be distinctly traced by chronologically surveying the acts of the legislature which may be found in the several editions of the *General Statutes of Kansas*. The following court decisions are also important: *Re Williams*, 79 Kan. 212; *Williams v. Walsh*, 222 U. S. 415; *Richards v. Coal Co.*, 104 Kan. 330; *The State v. Reaser*, 93 Kan. 628; *State v. Wilson*, 61 Kan. 32. Valuable data are to be found in the reports of the various state bodies administering labor laws, especially in the *Annual Reports of the Inspector of Coal Mines*.

3. *Laws of Kansas, 1883*, ch. 117.

mine; required two openings, signalling and safety devices; laid down provisions regarding ventilation; prescribed the employment of a mining boss; and made provision for a state inspector of coal mines. As the industry developed, new legislation has been enacted to meet various problems. Coal must now be weighed before being screened, there must be wash houses, provisions for ventilation are more adequate, the use and handling of explosives and the firing of shots are carefully regulated, provision has been made for mine rescue, and there is a mine examining board. The present code regulates in considerable detail the conduct of mining operations.[4] It is not a complete code, and is in places ambiguous; yet on the whole it is adequate.

In the development of this code, there has been but little co-operation between the miners and the operators. No doubt this has been due in large part to the aggressive leadership of both groups. Something could still be gained through co-operative effort. Indeed, under the leadership of the Commission of Labor and Industry, several conferences have recently been held primarily for the purpose of arriving at some understanding of the meaning of certain sections of the mining law. In view of the changed character of the union's leadership, this may well be the beginning of a movement which will

4. The present mining code will be found in the *Revised Statutes of Kansas, 1923*, ch. 12, secs. 1618-1620; ch. 17, secs. 207-209; ch. 19, secs. 2504-2506; ch. 49, secs. 101-108, 201-290, 306-390; ch. 74, secs. 2101-2104.

eventually lead to a general revision of the entire code.

Metal Mine Inspection. There is no code of laws regulating the metal mining industry, although the mining of lead and zinc is of considerable and increasing importance. In 1919 the number of wage earners employed in Kansas metal mines was 1,141, and this number had increased to 3,372 in 1929. However, by agreement between the metal mine operators and the labor commissioner, the Commission of Labor and Industry has promulgated the Oklahoma Metal Mines Code.[5] Metal mines are now being regularly inspected by the chief inspector of coal mines. There is but one law on the Kansas statute books which directly regulates conditions of labor in lead and zinc mines. This law, enacted in 1917, prescribes that the daily hours of labor must not exceed eight, except in case of emergency when necessary to prevent loss of life or property.[6]

B. Child Labor Legislation

The problem of child labor has never assumed formidable proportions in Kansas principally because her agricultural and industrial operations have not generally been adapted to the use of child labor. The largest number of children between the ages of ten and fifteen years returned in any census as being gainfully occupied was 22,489 in 1900.

5. The Commission of Labor and Industry; *Revised Mining Laws of Kansas*, 1929, pp. 28-33.
6. *Laws of Kansas, 1917*, ch. 242.

Most of the children gainfully occupied in Kansas are to be found in agricultural employments, practically all of whom are reported as being engaged in general farm labor. Furthermore, children are usually employed on the home farm, and many of those reported as working away from home are employed on the farms of relatives or neighbors. Less than fifteen per cent of the total number of employed are engaged in manufacturing, transportation, trade, domestic and personal service, and in clerical occupations. No legislation limiting or regulating the employment of children in agriculture has been passed; however, school attendance laws limit to some extent the employment of children on farms.

The first legal enactment directed specifically against the employment of children came in 1883, as an amendment to the coal mining law.[7] The employment of children under twelve years of age in coal mines was then absolutely prohibited. A second act was passed in 1889, prohibiting the employment of children under fourteen years of age as acrobats, gymnasts, contortionists, circus riders, rope walkers, "or in any exhibition of like dangerous character," or as beggars, mendicants, street-singers or street-musicians.[8]

Although compulsory school attendance legislation dates back to 1874, it was not until 1903 that

7. *Laws of Kansas, 1883,* ch. 117, sec. 17. Apprenticeship laws were enacted earlier. *Laws of Kansas, 1855,* ch. 6; *1859,* ch. 13; and *1868,* ch. 5.

8. *Laws of Kansas, 1889,* ch. 104, sec. 1, 48 c, d, and f.

provisions directly affecting the employment of children began to appear in the school laws. In 1903 an act providing that children between the ages of eight and fifteen years should attend school during the period it was in session was passed, but children fourteen years of age or more who were graduated from the common schools, those who were mentally or physically incapacitated, and those whose labor was necessary for the support of themselves or others were not required to attend school at all.[9] Another loophole of the same kind was introduced in 1907 when boards of education were authorized to permit temporary absences from school of children between the ages of eight and fifteen years "in extreme cases of emergency or domestic necessity".[10] Sugar beet growers have regularly availed themselves of this provision.

The Act of 1905. A comprehensive child labor law was first enacted in 1905, forbidding the employment of children under fourteen years of age in factories, packing houses, or in or about mines, and of children under sixteen years at any occupation or in any place dangerous to life, limb, health, or morals.[11] Provisions regarding school certificates were included. The enforcement of this act is said to have resulted in taking many children out of industry, but the law was found to be defective in many respects. Its scope was too narrow, and it did not regu-

9. *Laws of Kansas, 1903*, ch. 423.
10. *Laws of Kansas, 1907*, ch. 317.
11. *Laws of Kansas, 1905*, ch. 278.

late the maximum number of daily and weekly hours during which children could be employed. Amendments were made in 1909, which broadened the scope of the act somewhat, and which introduced hour regulations.[12] The revised law specified no child under sixteen could be employed for more than eight hours per day or forty-eight hours per week, or between 6 p.m. and 7 a.m.

Child Labor Standards. The Federal Child Labor Act of 1916 set standards that were more advanced than those established by the Kansas law. This stimulated local interest in the state law, and in 1917 further amendments were made.[13] The minimum age at which children could be employed in mines was raised from fourteen to sixteen, and this provision was interpreted as covering the employment of children in quarries. Hour regulations were extended to include hotels, restaurants, and mercantile establishments. Important changes were made also in the matter of work certificates for children under sixteen. No further changes have been made in the provisions of the child labor code.

In 1919, as a result of the work of a Children's Code Commission, the legislature raised the compulsory school attendance age from fifteen to sixteen.[14] Another Children's Code Commission succeeded in getting the legislature of 1923 to abolish the poverty and the emergency and domestic necessity

12. *General Statutes of 1909*, secs. 5094-5098.
13. *Laws of Kansas, 1917*, ch. 227.
14. *Laws of Kansas, 1919*, ch. 272.

clauses.[15] Other important amendments were attempted, but without success. Children under sixteen who have not completed the eighth grade are now required to attend school, the minimum term of which is by law eight months, unless they are mentally or physically incapacitated.

Summary. On the whole, the administration of the child labor law has not been satisfactory, largely because of a lack of funds for inspection and prosecution and because of public indifference in enforcement. Nevertheless, it appears reasonable to infer from such figures as are available that the number of children between fourteen and sixteen employed in industry has declined appreciably since 1905.[16] Child labor and compulsory school attendance laws, and an increase in the real wages of Kansas workers, have been the chief factors in bringing about this decline.

As compared with the labor and educational provisions of the Minimum Standards for Child Welfare set up by the Federal Children's Bureau, which, of course, are ideal, the Kansas law is incomplete. The age at which children may be employed is lower and the number of hours they are permitted to work is greater than those suggested in the Bureau's standards. The minimum school term is shorter, there are no continuation schools, and the admin-

15. *Laws of Kansas, 1923*, ch. 182, sec. 2.
16. Comparable data since 1918 are found in the reports of the State Department of Labor, Industrial Court, Public Service Commission, and the Labor Department of the Commission of Labor and Industry.

istrative machinery for enforcing child labor legislation is inadequate.

C. Regulation of Hours of Labor

The Eight-Hour Public Works Law. Hour regulations, except those made for women and children, which are discussed elsewhere, are not extensive in Kansas. The most important laws relate to public works and to the police force. Kansas passed her eight-hour public works law in 1891.[17] According to that act, eight hours constitute a day's work for all laborers, workmen, and mechanics who are employed by or on behalf of the state or any of its political subdivisions, or by contractors or others doing work or furnishing materials for these governmental units.

The constitutionality of the Kansas eight-hour public works law has been upheld by the United States Supreme Court in a decision which is the leading case on this aspect of constitutional law.[18] The main ground upon which the validity of the statute was upheld was that a government may decide the terms upon which it shall employ workmen or have work done for it; therefore, the state in delegating to its municipal agents the function of performing public works could prescribe the conditions under which the work should be performed. The act has never been generally enforced. As recently as 1929, investigation revealed the fact that the act was

17. *Laws of Kansas, 1891*, ch. 114.
18. *Atkin v. Kansas*, 191 U. S. 207. See also *The State v. Atkin*, 64 Kan. 174.

being "very flagrantly violated." [19] Lack of funds to make inspections accounts in part for widespread violation, but this lack of funds is explained and violations are made possible largely by general lack of public interest in the law.

Railway Employees. In 1905 it was made unlawful to require or to permit certain classes of railway employees who have worked in their respective capacities for sixteen consecutive hours to work any longer until they have had eight hours of rest.[20] Exceptions are allowed in case of washouts, unavoidable blockades or obstructions, and crews on trains containing live stock or perishable freight in carload lots may run to the next division point irrespective of the number of hours already worked.

Women and Minors. In 1915 Kansas was one of the few states not limiting the hours of women workers in any way. That there was need for such regulation is indicated by data for certain establishments, which show that almost eighty-five per cent of the women workers were employed for nine hours or more daily.[21] Regulations under the Welfare Act effected some improvement in respect to the length of the work day and of the work week. For most women and minors a work day of nine hours was

19. Commission of Labor and Industry, *Report of the Labor Department for 1929*, p. 10. Kansas Bureau of Labor, *Seventh Annual Report*, pp. 4-16; *Report for 1901-1902*, p. 398.

20. *Laws of Kansas, 1905*, ch. 342; *1907*, ch. 280.

21. Data are to be found in the Kansas Department of Labor's combined *Thirty-first and Thirty-second Reports* and in the *First Biennial Report of the Industrial Welfare Commission.*

established. In public housekeeping establishments and telephone exchanges shorter hours were the rule. Special exigencies had to be provided for, and these occasioned various exceptions to the general regulations. Attempts to limit night work in public housekeeping establishments largely failed, especially in restaurants.

Other Workers. Legislation regulating the hours of labor of other classes is not extensive. Cities of the first class having more than a specified population may not employ patrolmen and sergeants for more than eight hours consecutively, and no city of the first class may employ any of its workers for more than twelve hours daily, except in cases of emergency.[22] This is supplemental to, and not in lieu of, the eight-hour law. Workers in lead and zinc mines may not be employed for more than eight hours daily.

D. Wage Legislation

There has been little wage legislation in Kansas, other than that establishing minimum wages for women and children. An "anti-scrip" law, passed in 1887 and amended in 1897, was declared unconstitutional by the Kansas Supreme Court on the ground, among others, that it denied equal protection of the laws.[23] A second attempt in the same direction was made in 1899.[24] This act requires scrip to be payable

22. *Laws of Kansas, 1921,* ch. 114; *1925,* ch. 190, sec. 1.
23. *Laws of Kansas, 1887,* ch. 171; *1897,* ch. 145; *State v. Haun,* 61 Kan., 146.
24. *Laws of Kansas, 1899,* ch. 152.

in lawful money fifteen days after date of issue, at the employee's option. However, it brought about no change in the practice of paying wages in scrip, and perhaps for this reason its constitutionality was never questioned.

Time of Payment. Several acts have been passed regulating the time of payment of wages, but all of these save one have been declared unconstitutional on the ground that they deny equal protection of the law. The one exception was an act of 1915 requiring all private corporations to pay wages at least twice monthly. In the *Revised Statutes of 1923*, the provisions of this law were embodied in a revised statement of the laws regulating time of wage payment, and the act was repealed. The revised statement has been declared unconstitutional.[25] However, the legislature of 1931 enacted a law requiring corporations to pay wages twice monthly. An act of 1911 requires all corporations to pay the wages of any employee who quits or who is discharged within ten days from the date his services terminate. The constitutionality of this law has been upheld, and it is in force today.[26] Mechanics' lien and wage preference laws have been enacted. There are also laws relating to garnishment, debt, and interest on wages due and unpaid.

Kansas pioneered in the establishment of small debtors' courts for the collection of small sums not

25. *Laws of Kansas, 1893*, ch. 187; *1915*, ch. 165; *1919*, ch. 221; *1923*, ch. 114; *Revised Statutes of 1923*, 44-301. *Anderson v. Oil Co.*, 106 Kan., 483; *Livingston v. Oil Co.*, 113 Kan. 702.
26. *Laws of Kansas, 1911*, ch. 22. *Livingston v. Oil Co.*, 113 Kan. 702.

exceeding twenty dollars.[27] Lawyers are not permitted to "intermeddle in any manner whatsoever" with the work of the court, and no costs are assessed or charged to either party. Judgment is conclusive upon the plaintiff, but the defendant may appeal to the district court. Very few of these courts have been established.

The Kansas Industrial Welfare Law. Kansas was slow to regulate the conditions of labor of women and minors, but when the movement for minimum wage legislation swept over the country, she rather quickly fell into line. The Kansas Industrial Welfare Law was enacted in 1915.[28] In scope the act extended to all occupations, and the term "occupation" was defined so as to include every vocation and pursuit and trade and industry. A commission of three, consisting of the commissioner of labor and two others appointed by the governor, one of whom had to be a woman, was established, and this Commission was authorized to investigate, at its discretion, the wages, hours, and conditions of labor of women and minors, and was required to make an investigation at the request of twenty-five or more persons engaged in an occupation. A full-time executive secretary was employed by the Commission.

If after investigation in any occupation, the Commission was of the opinion that wages, hours or conditions were prejudicial to the health or welfare of a

27. *Laws of Kansas, 1913,* ch. 170.
28. *Laws of Kansas, 1915,* ch. 275.

substantial number of women or minors, it was required to establish a board representing employees, employers, and the public. This board determined the standards necessary to provide a woman of ordinary ability with the minimum conditions deemed necessary to safeguard health and welfare. Standards agreed upon by this board were recommended to the Commission, which had power to approve or reject any recommendation made. The Commission was empowered to put into effect any recommendation it approved, after a public hearing. Appeal to the courts was allowed. Later, when the administration of the act was vested in the Industrial Court, the system of boards was abolished.

Administration. The Commission was slow to act.[29] The first decree was issued more than a year after it had established a permanent office and appointed a secretary. Altogether, twenty-five decrees were issued, one of which merely required the keeping of certain records. These decrees covered wages, hours, and working conditions of women and minors employed in laundries, mercantile establishments, public housekeeping establishments, factories, and telephone exchanges. Wages in public housekeeping establishments were never regulated. In all, there were eight wage decrees, four of which were merely re-issues making modifications. The first five

29. Industrial Welfare decrees may be found in the various reports of the Industrial Welfare Commission, the Industrial Court, the Public Service Commission, and the Labor Department of the Commission of Labor and Industry.

were issued by the Industrial Welfare Commission and were based upon the recommendations of boards; the last three were by the Court of Industrial Relations and were issued without board action.

Much time was consumed in setting these rates, even by the Industrial Court; in only two cases did it require less than two years to set a rate.[30] At no time did these decrees cover as many as fifty per cent of the women to whom it was practicable to extend them. The weekly rates set for full-time experienced adults were low, averaging as follows: 1918, $8.29; 1919, $8.97; 1922, $10.10. The highest rate was $11, which obtained in laundries from 1922 to 1925 and in factories from 1919 to 1925. The lowest rate was $7, and this applied to telephone operators in cities of less than 1,000.

Two special provisions of some importance were inserted in the factory and laundry decrees of 1922. The factory decree provided that the wage of workers on piece rates was to be not less than the minimum weekly wage established for that class of workers, and the laundry decree that workers not employed at full time should be paid the full minimum wage, provided in each case that the worker accepted all work or time offered and was subject to the employer's call at least five days each week. All wage decrees were for a specified basic work week, but time and one-half for overtime was re-

30. An excellent analysis of the operation of the Kansas Industrial Welfare law is to be found in *Bulletin No. 61* of the Federal Women's Bureau.

quired in only five cases—the telephone decree of 1918, the manufacturing decrees of 1919, 1920, and 1922, and the laundry decree of 1922. All wage decrees ceased to be effective in 1925 when minimum wage regulations were declared unconstitutional by the Kansas Supreme Court, following the precedent set by the United States Supreme Court.[31]

Figures gathered by the United States Women's Bureau, the Industrial Welfare Commission, and the Industrial Court show that the earnings of the lowest paid women workers were raised somewhat by minimum wage regulations.[32] The effect upon the earnings of the typical woman worker, however, is not so clear, although it does appear that increases in rates and earnings in laundries and mercantile establishments between 1920 and 1922 were due to changes in the legal minimum rates put into effect. No effect on the earnings of the highest paid workers can be traced to minimum wage regulations. However, the fact that at least twenty-five per cent of the women received rates considerably higher than the minima required by law is evidence that in Kansas legal minimum rates did not tend to become maximum rates. The negligible effect of legal minimum rates upon the earnings of all but the lowest paid workers is attributed by the Women's Bureau to the fact that in Kansas minimum rates were so

31. *Topeka Laundry Co. v. Court of Industrial Relations*, 119 Kan. 12, following *Adkins v. Children's Hospital*, 261 U.S. 525.

32. These data are presented and analyzed in *Bulletin No. 61* of the Women's Bureau, pp. 342-346.

low that they did not appreciably change the customary relation between the wages or the different groups of workers.[33]

The theory underlying minimum wage legislation is that earnings should be adequate to provide a reasonable standard of living. But every wage rate set in Kansas was far below cost-of-living estimates.[34] The Commission recognized that the first rates were too low, but it did not recognize that later ones were also too low. The Court of Industrial Relations, despite its ideal of a fair wage, could not bring itself to set minimum rates that were adequate to meet the cost of living. The principal explanation for these low rates seems to be that the regulatory bodies felt that really adequate rates would have aroused such resentment among employers that they could not have been enforced.

Regulation of Working Conditions. Regulation of working conditions under the minimum wage law were simple, and in general required suitable seats for women; sanitary drinking fountains, or individual drinking cups; proper washing facilities, including individual towels; separate toilets for women; adequate lighting and ventilation; and dressing rooms with cots for emergency purposes. Certain special provisions were made in some cases, as, for example, requiring heat deflectors on rotary body and sleeve ironers in laundries, and clean and com-

33. *Ibid.*, p. 344.
34. *Ibid.*, pp. 131-156.

fortable places outside factory workrooms in which women could eat lunch.

Few new general orders are being issued as the necessity for numerous issues under the present law has been eliminated through the adoption by the Labor Department of the American Safety Association regulations as standard for Kansas industrial plants. The enforcement of existing regulations is seriously hindered, however, by constitutional limitations. Wage regulations for adult women have been held to be unconstitutional, but the wages of minors may be regulated and all wage decrees in Kansas have provisions covering this class of workers. Furthermore, the hours and the conditions of labor for both women and minors may be regulated.

II. THE INDUSTRIAL COURT

The most outstanding piece of Kansas labor legislation is found in the Industrial Court Act of 1920. This law was the product of peculiar national and local conditions and a clash of the personalities of Alex Howat, leader of the miners, and Henry J. Allen, governor of Kansas. An unusually large number of strikes involving millions of workers occurred in 1919. The Anti-red campaign inaugurated by Attorney-General Palmer, with its lurid accounts of bombs, explosions, and conflagrations, and the sensational voyage of the "Soviet Ark" were capitalized in a dramatic and spectacular manner by the press. Employers had begun their great open-shop drive, and the President's First Industrial Conference had been wrecked on the rock of collective bargaining in October, 1919. In November of this same year, the national bituminous coal strike began and caught the public unprepared. And when the strike continued despite Judge Anderson's injunction compelling the miners' officials to rescind the strike order, the public became even more alarmed at the miners' open defiance of the government. Then, too, the action of the powerful railway brotherhoods in forcing the passage of the Adamson Act in 1916, by holding "their stop-watch on Congress," was still fresh in the public mind.

Governor Allen attempted to bring about a local settlement of the national coal strike and failed, whereupon the State of Kansas undertook to mine coal. Soon after the state began its mining operations, the national coal strike was settled, and a local settlement followed. However, public opinion was thoroughly aroused; a special session of the legislature was called; and the Industrial Court Law was enacted.[35]

Industries Affected. Five industries were declared to be affected with a public interest: the manufacture of food; the manufacture of clothing; the mining or production of fuel; the transportation of food, clothing, and fuel; and all public utilities. The operation of these industries with reasonable continuity and efficiency was declared to be necessary to the general welfare. In order to achieve this continuity and efficiency of industry, and to insure a fair return to capital and labor, a court composed of three persons was established and given power to make investigations, to settle disputes between employers and employees, and, if necessary, to take over and

35. *Session Laws of 1920*, ch. 29. The literature on the Industrial Court is fairly extensive. The following references are suggested as being among the most important. *Annual Reports of the Industrial Court*, of which there are five. Henry J. Allen: *The Party of the Third Part*. William L. Huggins: *Labor and Democracy;* also *Who Rules and How*. MMS. National Industrial Conference Board: *The Kansas Court of Industrial Relations, Research Report No. 67*. Harry DeMerle Wolf; *The Kansas Court of Industrial Relations*, MMS., University of Chicago. United States Bureau of Labor: *Bulletin No. 322*, April, 1923. Articles by Edward Berman, *American Economic Review*, March, 1928; Herbert Feis: *Survey*, February 25, 1922, December 15, 1922; and *Quarterly Journal of Economics*, August, 1923. Sidney Post Simpson: *38 Harvard Law Review*, 776. J. S. Young: *Minnesota Law Review*, Vol. 4, p. 489; Vol. 5, pp. 215 ff, pp. 364 ff. Case references are given in footnotes 39 and 40.

operate industries. It was made unlawful willfully to hinder, delay, or suspend operations in any of the industries mentioned, and to conspire with others to quit work (strike) or to induce others to quit, or to picket, with the intent to violate the Industrial Court Law.

A. The Operation of the Industrial Court

The Court functioned for five years, but practically all of the cases it considered arose and were disposed of during the first two years of its existence. Nearly all of the cases were initiated by workers.

In settling wage disputes, the Court accepted as a basis for its definition of a fair wage the enumeration of factors laid down by Congress in the Esch-Cummins Act for the guidance of the Railroad Labor Board. It is difficult to tell from the evidence available what were the factors upon which specific decisions were based. Perhaps the most important single element was the cost of living.

The highest wage granted was 67.5 cents per hour and was awarded to electric linemen in 1920. These workers were described as faithful, skilled, first-class workers "who measure up to the best standard," doing extra-hazardous work, and the award was made during a period of "unprecedented and exorbitant" and rising prices. The increase granted amounted to an average of $186 for a working year of 310 days. As a rule, common labor was given for-

ty-five cents per hour, semi-skilled labor fifty cents, and skilled labor sixty cents. It should be pointed out that highly skilled workers made practically no use of the Court. The small number of wage decisions and the short period of time within which they were rendered makes it practically impossible to draw significant and comprehensive conclusions.

Perhaps the most enlightened views of the Court are reflected in its orders relating to the length of the work day and the work week. An eight-hour day was not held sacred. It was suggested, but never ordered, that in some occupations a shorter day might be necessary. For the meat packing industry, the Court considered an eight-hour day a good standard. A nine-hour day was approved for workers on electric interurban railways, and a ten-hour day when agreed upon by the workers and their employers. A twelve-hour day in a flour mill was strongly disapproved, but was not reduced. A seven-day week was discouraged, and in some cases overtime at penal rates was allowed for a seventh day and for work on Sunday.

The problem of allowing a fair rate of return on capital was relatively simple in public utilities, where the state also has control of the rates charged for services. In some cases rate increases were allowed; in others wage increases were refused; and in some wage decreases were ordered. In industries other than utilities, the Court was faced with a different problem. The Court insisted that there was an

"irreducible minimum" of wages, which was not clearly defined, below which workers could not be asked to work. Employers were allowed to limit their production and consequently the employment of their workers regardless of the effect upon earnings of employees. As a result of economic depression, the "one man, one job" rule of union labor was abolished. These actions scarcely more than indicate how the Court would finally have attempted to solve this difficult problem.

B. The Relation of the Industrial Court to Labor Disputes

1. The Prevention of Strikes

It was thought by many that the Industrial Court would eventually prevent strikes in essential industries. Perhaps it might eventually have done so had it continued to function. But in its five years of operation the Court did not prevent strikes and it did not diminish the number of them in Kansas.[36] Strikes occurred in the mining, transportation, and

---

36. Number of Labor Disputes Beginning in Specified Areas from 1918 to 1928.*

Year	*Kan.*	*Okla.*	*Col.*	*Neb.*	*Mo.*	*West of Miss.*	*U. S.*
1918	41	19	32	11	105	634	3,347
1919	45	32	31	17	69	594	3,571
1920	14	24	22	12	63	623	3,291
1921	21	29	27	11	54	569	2,381
1922	4	9	7	3	26	155	1,088
1923	5	2	3	1	27	210	1,553
1924	6	6	5	2	35	163	1,240
1925	12	10	10	2	11	146	1,300
1926	2	2	5	1	9	89	1,032
1927	1	3	5	2	14	92	734
1928	2	3	5	—	8	81	629

* United States Bureau of Labor Statistics, *Monthly Labor Review*, Vol. XXX, No. 6, p. 1330.

meat packing industries. The public waited expectantly for the Court to take drastic action in these cases. However, the Court did little to effect resumption of operations.

The Howat Strike. When, in September, 1921, Howat and Dorchy began serving their sentences for contempt of court and violation of the Industrial Court Law, a general suspension of coal mining, known as the "Howat Strike," took place in Kansas. This strike presented, for the first time since the establishment of the Industrial Court, a situation involving an appreciable curtailment of the output of Kansas coal. In the Court itself there was a difference of opinion as to the nature of the situation and the course to pursue. The presiding judge considered the situation an emergency. He proposed that the Court should call upon operators and miners to resume operations, and that a military police force should be secured to provide protection. If necessary, the Court was to aid in obtaining and protecting strikebreakers. Finally, if operators refused to attempt to resume production under these terms, he proposed that the Court itself should take over and operate the mines. His colleagues were of the opinion, however, that because plenty of coal was easily available and because steps to end the strike were being taken by the president of the United Mine Workers of America on the ground that it was in violation of an agreement with the operators, no action by the Court was then necessary. And

the Court took no action. Operations were soon resumed, and the situation did not really become critical.

The National Coal Strike of 1922. The Court was again divided as to the course it should pursue in the national coal strike of 1922. There was coal enough on hand in Kansas to last several months. Two days before the strike began, a formal hearing was held by the Court at which representatives of both the operators and the miners appeared. Out of this hearing came an order continuing the existing contract between the operators and miners for thirty days. This was the only order issued by the Court in this dispute. Judge Huggins, who did not sign the order, says it was dictated during a recess in the hearing by the other judges before the first witness had left the stand and before the most important part of the testimony had been given.[37] Later Judge Huggins again presented his previous plan for resuming operations, but this was again opposed by his colleagues. The Court kept itself advised as to the coal situation in Kansas. During the strike some coal was mined by small independent and by co-operative mines. In the latter part of April, the Court brought pressure to bear upon operators to open some deep mines, and a few were opened. From June 1 to September 1, 1922, over 600,000 tons of coal were mined. It should be pointed out that this was made possible by a factional fight then going

37. Huggins: *Who Rules and How*, MMS.

on between supporters of the national president and supporters of Howat, who had been suspended from the Union. As soon as national negotiations began, these workers ceased to work in order to clear themselves of any taint of non-unionism. A national settlement was soon effected, and operations were generally resumed.

The Railway Shopmen's Strike of 1922. The only action taken by the Court in the Railway Shopmen's Strike of 1922 was to order an investigation of the causes of the strike. This was done, Mr. Huggins says, chiefly to make it "easy for the attorney general's department to issue subpoenas, examine witnesses, and thus better enforce the penal sections of the industrial act." The anti-picketing and anti-intimidation provisions of the Industrial Court Law were enforced by local and state peace authorities, including a detachment of 250 troops. But the Court held that it had no authority to settle the dispute. because an interstate industry was involved over which it had no jurisdiction.

The Packers' Strike of 1921. The Court took an active part in the Packers' Strike of 1921. Soon after the strike began, a hearing was held at which representatives of workers and employers appeared. Neither side cared to submit the controversy to the Court for settlement. The Court thereupon announced that it would see to it that the packing plants were operated with reasonable continuity. Local peace officers were informed that if they could

not enforce the anti-picketing and anti-intimidation provisions of the act, the Court would call upon the governor for military assistance. Daily sessions were held by the Court during the first few days of the strike. The packers operated their plants with strike-breakers, and the local peace officers provided protection. It was obvious from the beginning that the strike was doomed to fail. Several days before the strike ended, a few of the strikers asked the Court to intervene, but it refused to do so on the ground that the applicants, being on strike, were not employees, and not being employees their case had no standing in the Industrial Court.[38]

2. Investigations of the Industrial Court

The Coal Mining Industry. Several investigations were made by the Court. The first and most important of these was of the coal mining industry, made in 1920 and 1921. Several orders were issued. One of these continued the existing prices of certain mining supplies used by miners until the miners and operators could agree upon a new price. Another related to a ten per cent discount taken by operators for advances to miners of money earned but not due. A minimum charge of twenty-five cents was allowed on any advance, and an additional maximum of two per cent upon amounts exceeding ten or fifteen dollars. A third order modified the "check-off system" by ordering that the check-off could be used to col-

38. Herbert Feis, *Quarterly Journal of Economics*, August, 1923, p. 720.

lect only regular union dues, fraternal benefit charges, and moderate disciplinary fines and assessments. A second investigation, of no special consequence, was made in 1923.

The Topeka Flour Milling Industry. An investigation of the flour milling industry in Topeka was undertaken in 1920 as a result of complaints that milling companies were limiting production. The Court found that mills were operating at only about sixty per cent of their capacity, because of limited marketing opportunities. As a result of this investigation, an order was issued requiring milling companies to secure permission before reducing their operations below seventy-five per cent of capacity; but no company was ever refused permission to reduce its operations, and six months later this order was rescinded.

Summary. The Industrial Court Law was very intensively litigated. Two parallel series of cases were involved, one arising from violations of the law by officials of the Kansas Miners' Union (the Howat-Dorchy cases),[39] the other from a refusal by an employer to obey certain orders of the Court (the Wolff Packing Company cases).[40] In the Kansas Supreme Court, the constitutionality of the act was upheld in every case, the principal ground being

39. *State v. Howat*, 107 Kan. 423; 109 Kan. 376, 779; *State v. Dorchy*, 112 Kan. 235; *State v. Howat*, 116 Kan. 227; *Howat v. Kansas*, 258 U. S. 181; *Dorchy v. Kansas*, 264 U. S. 286, 272 U. S. 306.

40. *Court of Industrial Relations v. Wolff Packing Company*, 109 Kan. 629, 111 Kan. 501, 114 Kan. 304; *Wolff Packing Company v. Court of Industrial Relations*, 262 U. S. 522, 267 U. S. 552.

that the industries concerned were affected by a public interest and that their regulation was a valid exercise of the state's police power. However, the United States Supreme Court thought otherwise. It was of the opinion that mining and meat packing were not so affected by a public interest that the regulation attempted was permissible. The act, it was held, deprived the employer of his property, and both the employer and the employee of liberty, without due process of law; therefore it was unconstitutional.

This decision did not dispose of the constitutionality of the section prohibiting the calling of strikes by union officials. In a later case the United States Supreme Court reversed one of the Howat cases, and subsequently the Kansas Supreme Court ruled that the section making it unlawful for a union official to compel or influence a worker to violate the law was to stand. The case was again appealed to the United States Supreme Court, but that body evaded the question of the constitutionality of a general prohibition of strikes by holding that the particular strike involved was of the kind that could be prohibited.

Much was expected of the Court by its friends, but few of these hopes were realized. The number of industrial disputes was not reduced, and continuity of production was not, and could not be, secured. The hope that prices would be stabilized was vain. The Court's wage decisions certainly

showed appreciation of labor's claims, but they did not achieve a high standard of wages. Hour regulations did not make material changes in the length of the work day. A fair return to capital was probably provided for public utilities, but it was beyond the power of the Court to achieve this in other industries.

The Court failed; in part because of constitutional limitations, in part because of political influences, and in part because of its attitude towards the function of trade unions in the economic order. The law has not been repealed, and some of its provisions could be used to advantage. However, it has become practically a dead letter.

III. EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION LEGISLATION

A. Employers' Liability Provisions

The daily routine of industrial life brings death and injury to thousands annually. Redress for the damages done to the person concerned is provided for by that great reservoir of legal principles—the common law. In Kansas, the master is liable under the common law if any injury is the result of his negligence, but the worker assumes the risks of his occupation. Furthermore, the negligence of a worker or that of a fellow servant absolves the master from liability.[41]

These legal relationships between master and servant may have been equitable when industry was in the handicraft stage, but as industry became more impersonal and mechanized they became progressively more unjust. Consequently legislative modifications of them were made in the form of employers' liability laws. The common law maxim that *actio personalis cum persona moritur* was abrogated in Kansas in 1868, and the personal representatives of one whose death was caused by the wrongful act or omission of another were allowed to maintain an action for damages.[42] Two years later, in 1870, rail-

41. *Dow v. Kansas Pacific Ry. Co.*, 8 Kan. 642; *U. P. Ry. Co. v. Young*, 19 Kan. 488; *A. T. and S. F. Ry. Co. v. Moore*, 29 Kan. 632.
42. *General Statutes of 1868*, ch. 80, sec. 422.

roads were made liable for damages to persons and property resulting from any neglect on the part of the companies.[43] Then came a series of acts which practically deprived railroad companies of the common law defenses. In 1874 the fellow servant defense was abolished.[44] The Federal Safety Appliances Acts of 1893 and 1903 materially limited the defense of assumption of risk;[45] the Federal Employers' Liability Act of 1908 abolished it, together with the doctrine of co-service, and modified the defense of contributory negligence for employees of interstate roads. In 1911 Kansas enacted a law almost identical with the Federal Employers' Liability Act of 1908.[46]

The same result was achieved in two other industries in a somewhat different manner. The Coal Mining Act of 1883 and the Factory Act of 1903 laid down some detailed regulations for the conduct of the mining and manufacturing industries, and allowed a right of action for death or injury occasioned by violation on the part of employers of the safety provisions required by law.[47] As first interpreted, these acts were held not to have abolished the defenses of

43. *Laws of Kansas, 1870*, ch. 93. See also *K. P. Ry. Co. v. Salmon*, 11 Kan. 83; *K. S. Ft. S. & G. Rld. Co. v. McHenry*, 24 Kan. 501; *Sewell v. Ry. Co.* 78 Kan. 16.

44. *Laws of Kansas, 1875*, ch. 93, sec. 1. Amended *1903*, ch. 393; *1905*, ch. 341, secs. 1 and 2; *1907*, ch. 281, sec. 1. See also *Union Trust Co. v. Thomason*, 25 Kan. 1; *McQueen v. C. B. U. P. R. C.*, 30 Kan. 689; *Railway Co. v. Sledge*, 68 Kan. 321; *U. P. Ry. Co. v. Young*, 19 Kan. 488; *Mo. Pac. Ry. Co. v. Haley*, 25 Kan. 35; *Mo. Pac. Ry. Co. v. Mackey*, 33 Kan. 298; *Mo. Ry. Co. v. Mackey*, 127 U. S. 205.

45. 27 *U. S. Stat. at Large*, p. 531; 32 *U. S. Stat. at Large*, p. 65. See also *Ry. Co. v. Brinkmeier*, 77 Kan. 14; *Brinkmeier v. Ry. Co.*, 81 Kan. 101.

46. *Laws of Kansas, 1911*, ch. 239. See *Fuller v. A. T. & S. F. Ry. Co.*, 124 Kan. 66.

47. *Laws of Kansas, 1883*, ch. 117; *ibid., 1903*, ch. 356.

assumption of risk and contributory negligence, which were formerly open to the employer under the common law, but they have since been interpreted as abolishing all the defenses in case of accident caused or contributed to by violation of safety provisions required by law.[48] Thus in 1911, when the workmen's compensation act was passed, most of the employers' common law defenses against liability for injuries sustained by their employees had been abrogated in Kansas.

Complete data are not available to show the amounts recovered by Kansas workers or their dependents under the common law principles of liability. Nor has any study been made of recoveries under the common law in Kansas as modified by the Employers' Liability Acts. Such data as have been collected, however, tend to confirm the general impressions derived from studies made in other states; namely, that recoveries were relatively not numerous; that the amounts recovered correlated badly or not at all with the extent of injuries; that awards were not large; that the lawyers' fees absorbed much of the awards; and that damages were seldom recovered in less than three years after accidents occurred. The doctrines of assumption of risk and contributory negligence account for almost all of the failures to recover in the Kansas courts up to 1902. Recoveries were based in about equal num-

48. *Baisdrenghein v. Ry. Co.*, 91 Kan. 730; *Cheek v. Ry. Co.*, 89 Kan. 247; *Madison v. Clippinger*, 74 Kan. 700; *Manufacturing Co. v. Bloom*, 76 Kan. 127; *Caspar v. Lewin*, 82 Kan. 604.

bers on the grounds of failure of the employer to furnish safe tools or equipment, the use of unsafe work places, and negligent acts of an agent or vice-principal.

B. Workmen's Compensation Provisions

Not only was Kansas among the first American states materially to limit the employer's common law defenses, but she was also among the very first to enact a workmen's compensation law. There had been practically no agitation for such a measure prior to its enactment. Interest had previously centered upon the enactment of a more stringent employers' liability law. In the middle of 1910, however, a state council of the National Civic Federation was formed, and the president of the Kansas Federation of Labor became a member of this council. Through this connection organized labor in the state became aware that there was widespread interest elsewhere in workmen's compensation legislation. The support of interested organizations, including political parties, resulted in the enactment of a compensation law in 1911 by an overwhelming majority.[49]

The Act of 1911. The model followed in drafting the Act of 1911 was the bill recommended by the National Civic Federation for railroads, although important changes were introduced.[50] The act ap-

---

49. *Laws of Kansas, 1911,* ch. 218.

50. *Report of the Employers' Liability and Workmen's Compensation Commission,* 62nd Congress, 2nd Session, *Senate Document No. 338,* Vol. 2, pp. 17-24.

plied to injury "by accident arising out of and in the course of employment" in certain especially dangerous occupations conducted for business, trade, or gain. These occupations were: railroading, manufacturing, mining and quarrying, electric, building, and engineering work, laundering, work in natural gas plants, and all employments where dangerous explosives or inflammable materials were used. Very broad definitions of these occupations were laid down, and the act applied only to firms employing fifteen or more workmen continuously.

The act was elective for both employers and employees. For employers a written statement of election was required, but the election of employees was presumed. Employers within the scope of the act, but electing not to accept its provisions, were deprived of the three common law defenses. Nevertheless, contributory negligence was to be considered in assessing damages and the common law defenses were allowed against employees covered, but electing not to accept the provisions of the Act, unless injury was caused by the willful or gross negligence of the employer. Compensation was not made the exclusive remedy, for damage suits were allowed where an injury was the result of the negligence of the employer, director, managing officer or agent, partner, or member of the association. No liability for compensation attached if injury was deliberately inflicted, if the worker was intoxicated when injured, or if he had willfully failed to use

safeguards required by law and provided by the employer.

Compensation for death was three times the earnings of the deceased during the year preceding injury. Where there were survivors wholly dependent, compensation was to be not less than $1,200 nor more than $3,600, except that if these dependents were not "citizens of and residing" in the United States or Canada, benefits were not to exceed $750.[51] Where survivors were only partially dependent, compensation was in proportion to their dependency with minimum and maximum benefits of $1,200 and $3,600. Liability was not to exceed $100 in cases where there was no dependent. For injuries not resulting in death, there was a waiting period of two weeks before benefit payments were made. *Total temporary disability* was compensated at the rate of fifty per cent of average weekly earnings for not to exceed ten years, with minimum and maximum weekly benefits of $6 and $15. In cases of *total permanent disability*, compensation was limited to ten years. For *partial permanent disability,* a worker received from twenty-five to fifty per cent of his average weekly earnings for not to exceed ten years, with minimum and maximum weekly benefits of $3 and $12.

---

51. In 1921 the Kansas Supreme Court held a provision of this kind unconstitutional in *Vietti v. Fuel Co.*, 109 Kan. 179. Later, in 1924, the Pennsylvania Supreme Court held a similar provision constitutional in *Liberato v. Royer*, 281 Pa. 277 which was affirmed by the United States Supreme Court in 1926 in *Liberato v. Royer*, 48 Sup. Ct. 373.

Three methods for determining the amount of compensation due were provided: agreement between the parties; arbitration; and court action. The simplest of these, and the one most frequently used, was the method of agreement. Failing to reach a satisfactory determination of the amount by the agreement method, arbitration could be resorted to if both parties consented. As a last resort, recourse could be had to district courts which constituted the only administrative machinery provided for at that time.

Employers were neither required to insure their risks nor to give evidence of their ability to act as self-insurers. There was, however, a provision allowing injured workers who feared for the security of their compensation payments to apply to a district court for a lump sum judgment equal to eighty per cent of the amount due and unpaid and prospectively due.

Provisions of 1913. In 1913 the compensation act was broadened in scope by being made applicable to county and municipal work.[52] More important than this, however, it was made to apply to firms employing five or more workmen continuously and to mines regardless of the number of workers employed. Another important change made was that employers were presumed to elect to come under the law unless they filed with the Secretary of State a written declaration to the contrary. No important

52. *Laws of Kansas, 1913*, ch. 216.

changes were made in the scale of benefits at this time.

Provisions of 1917. Important amendments were made also in 1917.[53] The scope of the act was again broadened by the specific inclusion of employment in grain elevators, beet sugar factories, the operation of telephone and telegraph lines, pole lines constructed or used for carrying conductors, and the construction and repairing of streets, roads, and highways. Election by employees not to come under the act was made more difficult. At this time important changes were made in the scale of benefits. Medical, surgical, and hospital treatment and supplies were required for the first time. The waiting period was reduced from two weeks to one week. The percentage of average weekly earnings to be paid for total temporary disability was increased from fifty to sixty per cent.

A new policy of compensating for permanent partial disability was adopted. A schedule fixing the percentage of wages and the number of weekly benefits to be paid for specified disabilities was embodied in the act. For non-scheduled permanent partial disabilities, compensation was set at sixty per cent of the difference between average earnings before and after disability. Some important changes were also made in the provisions for agreement and arbitration. In case of failure to agree the

53. *Ibid., 1917,* ch. 226.

district court was authorized to appoint an arbitrator upon written application of either party.

Revision of 1927. For ten years, from 1917 to 1927, there was only one amendment to the compensation act, and that was unimportant.[54] In 1927, however, the act was thoroughly revised.[55] Perhaps the most important amendment made at this time was one which established a commission to administer the compensation act. A second important amendment required all employers to insure or to give satisfactory proof of ability to carry their own risk. Thus two glaring defects of the Kansas Act were remedied. Compensation may still be determined as before by agreement or arbitration, but the commission is now empowered to settle any controversy, its action being subject to court review. The scope of the act was extended slightly, and a few relatively unimportant changes were made in the scale of benefits.

Summary of the Present Compensation Act. A short summary of the Compensation Act as it now stands (1931) may be presented. In scope the act applies to hazardous employments, but, except in mining and building, only to firms employing five or more workers continuously. The act is elective, but election is presumed in case of those to whom the act automatically applies. Employers are com-

54. *Laws of Kansas, 1919*, ch. 222. Blind persons over eighteen were permitted to waive their rights to compensation for injuries caused directly by blindness.

55. *Laws of Kansas, 1927*, ch. 232.

pelled to insure or give proof of ability to carry their own risk. The act is administered by the Commissioner of Compensation. For death with total dependency resulting, compensation is equal to three times the average yearly earnings with a maximum of $4,000 and a minimum of $1,400. If dependency is only partial, benefits are in proportion to dependency. If dependents are not citizens of or residing in the United States, compensation is not to exceed $750. Reasonable burial expenses, not to exceed $150, must be paid in all cases of death.

For total disability, compensation is sixty per cent of average weekly earnings, with minimum and maximum weekly benefits of six dollars and eighteen dollars, for a period not to exceed eight years. Partial permanent disability is compensated according to schedule, or, if not scheduled, by sixty per cent of the difference between earnings before and after injury, with a maximum weekly benefit of eighteen dollars, and for a period not to exceed 415 weeks. There is a waiting period of one week before compensation is payable. Medical benefits up to $100 are allowed, and this may be increased by an additional $400 by the Commissioner of Compensation, thereby making the total medical benefit allowable $500. Compensation claims may be settled by agreement, by arbitration, or by the Compensation Commissioner. Appeals upon questions of law and of fact are allowed to district courts and on questions of law to the Kansas Supreme Court.

Administration of the Compensation Act. Very little information is available to show the operation of the Compensation Act in its early years. Few employers elected and many employees rejected the act, largely because of the uncertainty of results to be obtained and doubt as to the costs likely to be involved. Other contributing factors were the option allowed workers in some cases of suing under the Employers' Liability Law, and because of the influence of shyster lawyers. As various amendments were made and as the results of the act's operation became clearer, the proportion of workers and employers covered increased steadily. At no time, however, has the number of workers covered represented a majority of the wage earners of Kansas. This has been due in part to narrowness in the scope of the act and in part to the fact that a great deal of Kansas industry is conducted in establishments employing fewer than five workers.

There would seem to be no doubt that workers under the Compensation Act receive more compensation for injuries than would be the case under the older system of employer's liability legislation. The average amount paid in each fatal case is approximately $2,500. For total temporary disability, the average in recent years has been about $125. Figures for permanent total and permanent partial disability are combined in available reports; the average compensation paid has been about $650. Medical costs per compensable case have averaged just under $50,

and for non-compensable cases $10.65. The present system of commission administration is proving more satisfactory than previous administration by the courts. Claims are disposed of promptly, there are relatively few appeals to the courts, and very few of the Commissioner's awards are reversed.[56]

As first enacted, the Kansas Compensation Act was deficient in many fundamental respects. And while it is true that subsequent legislation has removed many of these defects, some of them still persist. In scope, the Kansas Act does not compare favorably with those of many of the other states and with current models. This is even more true of the scale of benefits. In both of these respects, the Kansas Compensation Act leaves much to be desired.

---

56. For a resume of the development of administative procedure for the Workmen's Compensation Act see pp. 60 ff.

IV. PROVISIONS GOVERNING LABOR ORGANIZATIONS AND EMPLOYMENT BUREAUS

A. Labor Organizations

The strength of organized labor has never been great in Kansas. Consequently there have been few strikes, lockouts, and boycotts, very little picketing, and few court actions involving labor organizations. Some legislation dealing with labor organizations has been passed, and most of this has been designed to further and protect the strength of unions.

Right of Workers to Organize. In Kansas there are no common-law crimes, and no version of the common law doctrine of criminal conspiracy has developed in connection with trade unions. Labor has always had the right to organize, and this right was incorporated into the Industrial Court Law, but a drastic criminal syndicalism law, aimed at the Industrial Workers of the World, was enacted in 1920.[57] Several legislative attempts to prevent discrimination against unionists have been made. In 1897 it was made unlawful to prevent workers from joining unions and to attempt to coerce workers by discharging or threatening to discharge them for belonging to a union. Another act of the same year made it unlawful to blacklist a worker. Both of these acts

57. *Session Acts of 1920*, chs. 29 and 37.

were declared unconstitutional by the Kansas Supreme Court on the ground, among others, that they deprived the employer of his liberty without due process of law.[58]

Another attempt to prevent discrimination was made in 1903 when it was made unlawful for an employer to compel a worker, as a condition of securing or continuing in employment, to enter an agreement to the effect that the worker would not join a union or would surrender his union membership.[59] This law was upheld by the Kansas Supreme Court, which distinguished between the employer's right to discharge a worker for belonging to a union and his right to compel the worker to make an agreement not to join or belong to a union.[60] The United States Supreme Court refused to uphold this distinction, in the famous case of *Coppage v. Kansas.*[61]

Collective Bargaining. The right to bargain collectively has never been questioned in Kansas. *Obiter dicta* suggest that the closed shop is lawful.[62] The right to strike has been somewhat restricted. In 1879 it was made unlawful for engineers to strike and quit their locomotives at points other than regularly scheduled destinations.[63] The Industrial Court

58. *Session Acts of 1897*, chs. 120 and 144. *Brick Co. v. Perry*, 69 Kan. 297, *Railway v. Brown*, 80 Kan. 312.
59. *Laws of Kansas, 1903*, ch. 222.
60. *The State v. Coppage*, 87 Kan. 752.
61. 236 U. S. 1.
62. *Brick Co. v. Perry*, 69 Kan. 297, 300; *The State v. Coppage*, 87 Kan. 752.
63. *Laws of Kansas, 1879*, ch. 134.

Act prohibited strikes called for the purpose of hindering, delaying, interfering with, or suspending the continuous operation of certain industries. This same act has restricted the right to picket and to boycott.[64]

Labor Disputes. The only legislation regarding the policing of labor disputes is a law enacted in 1897 designed to prevent the importation of private guards in cases of labor disputes, and requiring that detectives appointed to preserve the peace must be residents of Kansas.[65] An injunction law, enacted in 1897, provided for trial by jury in cases of indirect contempt of court, but this act was soon repealed.[66] The Clayton labor-injunction bill, passed by the United States House of Representatives in the Sixty-second Congress, was enacted into law by the Kansas Legislature in 1913, but the companion bill providing for jury trial in certain cases of indirect contempt was not passed.[67] It is clear that the injunction act has made no modification in the law of injunction.[68] Union labels and trade marks are protected.[69]

B. Employment Bureaus

In 1901 Kansas again pioneered when a free employment bureau was established, and cities of the

64. See *Crane v. Snowden*, 112 Kan. 217; *The State v. Personett*, 114 Kan. 680; *Bull v. International Alliance*, 119 Kan. 713.
65. *Laws of Kansas, 1897*, ch. 124.
66. *Laws of Kansas, 1897*, ch. 106; *ibid., 1904*, ch. 123.
67. *Laws of Kansas, 1913*, ch. 233.
68. *Bull v. International Alliance*, 119 Kan. 713. See also *Crane & Co. v. Snowden*, 112 Kan. 217, and *The State, ex rel., v. Howat*, 109 Kan. 376.
69. *Laws of Kansas, 1891*, ch. 213.

first and second classes were ordered to set up local employment offices of the "mail order" type.[70] This legislation proved to be wholly unsatisfactory. Nevertheless, it was not until 1920 that a system of state offices was established, and this system is skeletal rather than comprehensive.[71] Five offices are maintained; these are located in Hutchinson, Kansas City, Salina, Topeka, and Wichita. The system assists in placing large numbers of harvest hands and many common laborers in other occupations. A law regulating private fee agencies was enacted in 1911.[72] It requires the agent to procure a license and to keep a register of all applicants, regulates the registration fees that may be charged, and prohibits false notices, advertisements, and information. The problem of private fee agencies has never assumed great importance in Kansas.

70. *Laws of Kansas, 1901*, ch. 185.
71. *Laws of Kansas, 1902*, ch. 62.
72. *Laws of Kansas 1911*, ch. 187.

V. ADMINISTRATION OF KANSAS LABOR LEGISLATION

A mass of regulative detail does not of itself constitute an adequate system of labor legislation. There must also be adequate administration. Indeed, the greatest need in the way of labor legislation today is not more laws but better administration. The history of much of our labor legislation may be succinctly summarized by saying that it has been put on the statute books and then forgotten. Unfortunately, the importance of adequate administrative machinery is not generally appreciated.

Early Administration. No special machinery was set up to administer early Kansas labor laws. Mechanics' lien, apprenticeship, wage preference, and employers' liability laws established certain rights, but redress could be secured only through regular court processes. In some instances, such, for example, as in the law prohibiting the employment of children as acrobats and gymnasts, county attorneys were required to prosecute violations upon complaint of competent persons. But, in general, enforcement was left to the initiative of the aggrieved individual.

The Development of Mining Law Administration. The office of coal mine inspector was created in 1883, and the inspector was given power to enter

mines to make inspections, to notify operators of violations and to prosecute them, through the county attorney, for disregarding notifications.[73] Furthermore, the inspector was authorized to apply for an injunction to suspend work in any mine when in his opinion any delay in the correction of dangerous conditions would jeopardize life or limb. Later the inspector was authorized to suspend operations on his own initiative.[74]

Until 1898 the mine inspector was appointed by the governor. In that year, however, a state association of miners, composed of representatives of local organizations of miners, was created.[75] The secretary of this association was ex officio state mine inspector. This method of selecting the inspector was abandoned in 1913, when the office was again made appointive.[76] On the whole, it may be said that the administration of mining legislation has been good.

The Bureau of Labor Statistics. In 1885, very soon after provision for mine inspection was made, a bureau of labor statistics was established.[77] This bureau was designed to be merely a statistical agency, and the only power the commissioner of labor statistics had was the power to collect and report information. The work of collecting statistics

73. *Laws of Kansas, 1883*, ch. 117.
74. *Laws of Kansas, 1907*, ch. 251.
75. *Laws of Kansas, 1898*, ch. 33.
76. *Laws of Kansas, 1913*, ch. 217. See also Kansas Bureau of Labor: *Twenty-ninth Annual Report*. pp. 1-2.
77. *Laws of Kansas, 1885*, ch. 188.

was reasonably well done, meagerness of appropriations being considered.

The Society of Labor and Industry. In 1898 the legislature adopted a new policy.[78] A state society of labor and industry, consisting of representatives of organized labor, was created, and the secretary and assistant secretary of this society became ex officio state commissioner and assistant commissioner of labor. More important than this, however, was the power given the commissioner at this time to enforce the labor laws of the state. Thus for the first time there was a central authority with power to enforce the observance of laws regulating child labor, hours of employment, the protection of health, life, and limb, and private employment agencies. In 1913 the method of selecting the commissioners was changed, and the offices were again made appointive by the governor.[79]

The Industrial Welfare Commission. In 1915 the Industrial Welfare Commission was established to administer minimum wage regulations.[80] It consisted of the commissioner of labor and of two other persons appointed by the governor. An executive secretary was employed to carry on the detailed work of administration. Appropriations for this department were exceedingly meager, and its effectiveness was consequently much limited.

---

78. *Laws of Kansas, 1898,* ch. 34.
79. *Laws of Kansas, 1913,* ch. 217. See also Kansas Bureau of Labor: *Twenty-ninth Annual Report,* pp. 1-2.
80. *Laws of Kansas, 1915,* ch. 275.

The Industrial Court. The outstanding development in the way of administrative machinery in Kansas was the Industrial Court.[81] The task of administering all the labor laws of the state was taken over by the Court in 1921, and at that time the Department of Labor and the Industrial Welfare Commission were abolished.[82] Mine inspection was also taken over by the Court in that year. In 1925, the Court was abolished and its duties were conferred upon a composite body known as the Public Service Commission.[83]

Recent Developments in Administration. In 1927 a change of great importance was made. The administration of the Workmen's Compensation Law was taken from the district courts and conferred upon a commissioner of compensation, a member of the Public Service Commission. By 1929 it was clear that the Public Service Commission was not the proper agency for the administration of labor legislation, and new machinery was set up to take its place.

A Commission of Labor and Industry, composed of three members, was set up to administer all labor laws.[84] For administrative purposes, two divisions have been established. One division under the direction of the commissioner of workmen's compensation, has the task of administering the Workmen's

81. *Laws of Kansas, 1920*, ch. 29.
82. *Laws of Kansas, 1921*, ch. 260, 261, 262, and 263.
83. *Laws of Kansas, 1925*, ch. 258.
84. *Laws of Kansas, 1929*, ch. 258.

Compensation Law. The administration of all other labor laws has been assigned to the Labor Department of this Commission which has three sub-divisions: factory inspection, free employment service, and mine inspection. Reports are issued by the commissioner of workmen's compensation, the labor commissioner, and the mine inspector.

The administration of factory inspection and accident reporting laws has never been entirely satisfactory.[85] Two deputies do all the work of factory inspection, and their salaries are low, being only $1,600 per year. Accident reporting laws are perhaps better observed now than ever before, but they apply only to industries covered by the Workmen's Compensation Law and to public utilities. It would, of course, be extremely difficult to induce or compel all employers to report all accidents sustained by workers. Mine inspection and mine accident reporting laws have always been reasonably well enforced, perhaps because of the strength of the miners' union.

The cost of administering labor laws has been low in Kansas.[86] Beginning with $2,000 in 1884, total expenditures passed the $10,000 mark in 1900, reached $25,000 in 1911, and $50,000 in 1919. The Industrial Court added materially to the cost of

85. *Laws of Kansas, 1909*, ch. 119; *ibid., 1911*, ch. 238, sec. 32; *ibid., 1927*, ch. 232, sec. 54-55.

86. Data will be found in *Reports of the State Auditor*. The following *Biennial Reports* are especially helpful for a rapid survey: *Eighteenth*, 1911-1912; *Twentieth*, 1915-1916; *Twenty-third*, 1921-1922; *Twenty-fifth*, 1925-1926.

administering the labor laws, and in 1921 expenditures reached a maximum of $157,000. Since the abolition of the Industrial Court, expenditures have been about $70,000 per year. Salaries of the principal labor officials were long unreasonably low in Kansas. For fifteen years, 1885-1899, the salary of the Commissioner of Labor was $1,000 and that of the Mine Inspector $2,000. The latter's salary was reduced to $1,500 in 1899 and remained at that figure until 1920. Salaries are still low, but much less inadequate than formerly. The chairman of the Commission of Labor and Industry receives $4,000 and each of the other commissioners $3,750, while the chief mine inspector receives $2,700. These salaries are not out of line with those paid to other state officials of equal rank.

Summary. Kansas has frequently been among the pioneers in the field of labor legislation. This has been especially true of her legislation on workmen's compensation, industrial welfare, industrial court, employment bureaus, small debtors' courts, hour regulations on public works, and bureau of labor statistics. Yet few, if any, of the fundamental features of modern labor legislation originated here. Had Kansas been a large industrial state, she might have exerted an appreciable effect upon the movement for labor legislation. Kansas has consistently failed to keep abreast of current trends, but she has not, as some contend, become reactionary in labor

matters. Her failure to keep abreast of current models is due in large part to the lack of unity in the trade union movement, and in part to the lack of co-operation between organized labor and employers in matters of labor legislation.

Changing industrial conditions and the advance of standards have nevertheless made necessary a revision of important parts of the labor code. The Workmen's Compensation Act still needs to be broadened in scope and liberalized in benefits. The coal mining code is ambiguous in places and parts of it are obsolete, and a code for metal mines should be enacted. Many improvements could be made in the child labor law, by increasing minimum wages and lowering maximum hours, and requiring longer school terms and continuation schools. The law bearing upon trade unions is confused here as elsewhere. More advanced forms of social insurance are needed. Fairly adequate machinery now exists for administering the laws. What is needed most of all is an organized body of civic leaders who will take upon themselves the creation and maintenance of an aroused and favorable public opinion without which administrative machinery cannot consistently and satisfactorily function.